



Serial No. 09/295,958; Navy Case No. 79628

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OFFICE OF PETITIONS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

RICHARD C. ADAMS et al

Serial No.: 09/295,958

Filed: 21 April 1999

For: DEVICE FOR SIMULTANEOUS TRANSMISSION OF TWO SIGNALS WITH  
IDENTICAL FREQUENCIES

Examiner: XXXX

Group Art Unit: XXXX

**PETITION UNDER 37 CFR 1.137(B) (cont.)  
(GROUNDS JUSTIFYING SETTING ASIDE ABANDONMENT)**

Honorable Commissioner of Patent and Trademarks  
Washington, D.C. 20231

Sir:

This is a request to revive Applicants' patent application under 37 CFR 1.137(b) on grounds that the application was abandoned unintentionally. These grounds are provided herein.

The crux of this petition pertains to three crucial events that set this case on a road to an unavoidable/unintentional abandonment. The first of these, described and evidenced below in greater detail, was Applicants failure in receiving a Notice of Missing Parts, requesting a missing declaration of Co-Inventor Mr. Barry Hunt. A notice of Abandonment was sent to Applicants almost one year to the day after the initial filing of the case. As a result of this abandonment, Applicants timely submitted a Petition to Set Aside Abandonment on the basis of 37 CFR 1.137(a).

The second event involves this aforesaid Petition to Set Aside Abandonment on the basis of 37 CFR 1.137(a). This petition was timely sent to the U.S. Patent and Trademark Office, however due to reasons unknown and contrary to Applicants' usual and customary procedures,

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the corresponding certificates of mailing were not signed on the Petition.

The third and final event impacting the abandonment of this case was the inaccurate designation within Applicants' docket system that the case was a willful abandonment by the Applicants versus an abandonment by the U.S. Patent and Trademark Office.

Addressing the first of these events in greater detail, Applicants filed the subject case on 21 April 1999. On 26 April 2000, practically one year later, a Notice of Abandonment was received at the office of Applicants' legal representative. The notice indicated that a missing inventor declaration had never been received by the U.S. Patent and Trademark Office. Applicants then timely filed a Petition for Revival of an Application Abandoned Unavoidably under 37 CFR 1.137(a) asserting that a Notice to File Missing Parts had never been received by them. Applicants records show this petition, dated 4 May 2000, was forwarded to the U.S. Patent and Trademark Office on 8 May 2000. A complete copy of this previously submitted Petition is provided herein as Exhibit F.

The second event of significance to the abandonment of this case was that the above-identified 37 CFR 1.137(a) petition, and accompanying documents, were not sent with completed certificates of mailing. A Ms. Ruth Swisher, now retired from the patent profession, was tasked with transmitting the documents. For reasons unknown, Ms. Swisher failed to follow the customary, usual and expected process of filling out the desired certificates of mailing. In Applicants' attorney's 13 years of experience with Ms. Swisher, this is the one and only instance he knows of where Ms. Swisher failed to carry out this duty.

Because of Ms. Swisher's retirement and because of a new generation of office assistants

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now in place at Applicants' attorney's office, evidence concerning the office procedures at the time and evidence of training pertaining to the mailings are now difficult to obtain. As a result, an effort under 37 CFR 1.137(b) rather than 37 CFR 1.137(a) is being tendered here. An examination of the case file in Applicants' possession does reveal only a copy of the sent document versus an original. This is further indicia that the 37CFR 1.137(a) petition had been sent, albeit without completed certificates of mailing. Exhibit G is a declaration of Ms. Jane Nunez, Patent Clerk, who states that she has made an examination of the case file and has reason to believe that the 37 CFR 1.137(a) petition had been sent. Accompanying this Declaration is Exhibit H which is a copy of the Applicants' case file jacket wherein it is inscribed that the 37 CFR 1.137(a) Petition had been sent.

Applicants believe that the previously submitted Petition under 37 CFR 1.137(a), Exhibit F, is persuasive in showing that no Notice of Missing Parts had ever been received by Applicants (or their legal representative). This previously provided Petition includes the missing response required, i.e. the declaration of Co-Inventor Mr. Barry Hunt.

The third and final event impacting Serial No. 09/295,958 is the lapse of time that transpired between the filing of the Petition of Revival under 37 CFR 1.137(a) and this presently filed petition.

On or about the second week of May, 2003, co-inventor Mr. Richard Adams approached his attorney Mr. Peter Lipovsky and made an inquiry regarding the subject application. Mr. Adams has a number of cases on file at the Applicants' attorney's office. A computer search was performed using the inventors' names as search terms.

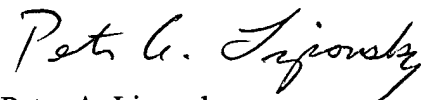
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Their common application, and the application that is the subject of the instant petition, was indicated in this data bank as an abandoned case. In the declaration (Exhibit G) accompanying this petition, Ms. Jane Nunez of Mr. Lipovsky's legal office states that she was the person who performed the referenced search for Mr. Lipovsky and that the result of this search was the discovery that the instant case was indicated as abandoned. A review of the case file by Ms. Nunez has resulted in her declaration that there is no written authorization from Mr. Lipovsky or any other authorized practitioner to abandon the case. As Ms. Nunez indicates, such a written authorization is the customary and usual procedure that is followed before a case will be allowed to be designated as abandoned on an attorney's docket.

Because of the assumed attorney permitted abandonment of the case, the case was then removed from Mr. Lipovsky's docket. Because of this improper designation, there was no incentive to check on the case until the recent inventor inquiry.

Because of the weight of evidence presented in their favor, Applicants request that their petition to revive their application on the basis of an unintentional delay be granted.

Respectfully submitted,



Peter A. Lipovsky  
Attorney for Petitioners  
Registration Number 32580

16 June 2003  
Legal Counsel for Patents 20012  
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PTO/SB/69 (12-97)

## PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

### Complete if Known

Application Number	09/295,958
Filing Date	21 April 1999
First Named Inventor	Richard C. Adams
Group Art Unit	--
Examiner Name	--
Attorney Docket Number	79628

### ☐ PETITIONS DECIDED BY PETITIONS OFFICE

- 301 Relating to Public Use Proceedings (37 CFR 1.292)  
302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02)  
303 To make special - infringement (37 CFR 1.102, MPEP 108.02)  
304 Relating to the Filing/Issuance of Divisional Reissue (37 CFR 1.177)  
305 To waive or suspend rules (37 CFR 1.183)  
306 To expunge a paper from patent application or patent file (37 CFR 1.59)  
307 Withdrawal of Attorney (37 CFR 1.36)  
308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103.104)  
309 Relating to Small Entity (37 CFR 1.28)  
310 Relating to reexamination (37 CFR 1.181-1.183)  
311 For correction of inventorship for applications - no filing date (37 CFR 1.48)  
312 For correction of inventorship re PCT applications (37 CFR 1.48)  
313 For filing application without one or more inventors (37 CFR 1.47)  
314 For filing PCT application without one or more inventors (37 CFR 1.47)  
315 For extension of time without fee in cases in Application Division (37 CFR 1.136(b))  
399 For matters before A/C for Patents - not specified  
408 Relating to a filing date under 35 USC 111 & 37 CFR 1.53  
411 Filing date for application filed by Express Mail (37 CFR 1.10)  
412 Filing date for lost application  
501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a))  
502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b))  
503 To waive/suspend rules (37 CFR 1.183)  
504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181)  
505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4))  
506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application  
507 To enter priority papers after issue fee payment (37 CFR 1.55(a))  
508 To defer issuance of patent (37 CFR 1.314)  
515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181)  
516 To waive/suspend rules re patent mailers in Office of Admin. (37 CFR 1.183)  
519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182  
521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377)  
523 To issue patent in the name of the Assignee (37 CFR 1.334(c))  
525 To withdraw a holding of abandonment (37 CFR 1.181)  
526 To order a Commissioner-Initiated Reexamination proceeding (37 CFR 1.520)  
527 To convert Provisional Application  
528 To reinstate abandoned Provisional Application  
530 PCT petition-unavoidable  
531 PCT petition-unintentional  
532 To accept unavoidably delayed payment of maintenance fee (37 CFR 1.378 (b))  
533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c))  
534 Petitions related to reexamination proceedings  
599 For matters before the Deputy A/C for Patents - not specified

### ☒ PETITIONS DECIDED BY THE GROUP DIRECTOR

- 601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02)  
602 To make special - continuity of earlier application (37 CFR 1.102, MPEP 708.02)  
603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02)  
604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02)  
605 To make special - Energy Program (37 CFR 1.102, MPEP 708.02)  
606 To make special - Recombinant DNA (37 CFR 1.102, MPEP 708.02)  
607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02)  
608 To reopen prosecution after Board decision (37 CFR 1.198)  
609 For review of final restriction requirement (37 CFR 1.144)  
610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes  
611 Relating to the prematurity of final rejection (37 CFR 1.181, MPEP 706.07(c))  
612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19)  
613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03)  
614 Relating to a requirement to cancel new matter from application (37 CFR 1.181.634, MPEP 608.04(c))  
615 Relating to formal sufficiency/propriety of affidavits (37 CFR 1.131, 1.132, 1.608, MPEP 715.07)  
616 To institute an interference (37 CFR 1.606)  
617 Relating to refusal to enter an amendment under 37 CFR 1.312  
618 For concurrent Ex parte and Inter parte proceedings (37 CFR 1.212)  
619 For return of original oath of patent application (MPEP 604.04(a))  
620 For extension of time (37 CFR 1.136(b))  
621 For interview after Notice of Allowance mailed (MPEP 713.10)  
622 Concerning appeal application before transfer of jurisdiction to Board (MPEP 1206)  
623 For second or subsequent suspension of action (37 CFR 1.103, MPEP 709)  
625 To reinstate Appeals dismissed in Group  
626 From denial of reexamination request (37 CFR 515(c))  
627 To enter an amendment after payment of Issue Fee (37 CFR 1.312(b))  
628 From refusal to issue a Certificate of Correction (37 CFR 1.181, MPEP 1480-1485)  
629 For withdrawal of attorney from application pending in group (37 CFR 1.36)  
630 For extension of time in a reexamination (37 CFR 1.550(c))  
631 To merge multiple reexamination proceedings (37 CFR 1.565(c), MPEP 2283)  
632 To effect a second conversion of inventorship (37 CFR 1.48, MPEP 201.03)  
633 Superconductivity  
634 To correct inventorship in a patent not in interference (37 CFR 1.324, MPEP 1481)  
635 To change inventorship in an application (37 CFR 1.48)  
636 To change inventorship in a patent (37 CFR 1.48)  
637 To withdraw from issue before payment of an issue fee (37 CFR 1.313(a))  
699 For matters before Group Director - not specified

### ☐ PETITIONS DECIDED BY BOARD OF PATENT APPEALS AND INTERFERENCES

- 701 To exercise supervisory authority re action by examiner/examiner-in-chief (37 CFR 1.644)  
702 To accept belatedly filed copies of interference settlement agreements (35 USC 135(c), 37 CFR 1.666(c))  
703 For withdrawal of attorney in proceeding under 37 CFR 1.201 - 1.288 (37 CFR 1.36)  
704 For access to a settlement agreement under 35 USC 135(c) (37 CFR 1.666(b))  
705 For access to an application in proceedings before the Board (37 CFR 1.14(e))  
706 From a refusal to issue a Certificate of Correction (37 CFR 1.322, 1.323)  
707 To correct errors in inventorship (37 CFR 1.324)  
708 For extension of time to file amendment under 37 CFR 1.196(b) (37 CFR 1.136)  
709 To make an application before the Board special (37 CFR 1.102)  
710 For extension of time to file supplemental Reply Brief (37 CFR 1.136)  
711 To assign particular members to hearing or to request augmented panel (35 USC 7)  
712 To decide miscellaneous questions in proceedings under 37 CFR 1.601-1.688  
713 To accept priority papers in applications in interference (37 CFR 1.644)  
714 To reinstate an Appeal  
799 For matters before Chairman of Board - not specified  
801 To make an application before the Board special (37 CFR 1.102)  
802 To reinstate an Appeal  
803 To extend time/suspend proceedings (37 CFR 1.196, 1.197, 1.304)  
804 For extension of time to file supplemental Reply Brief (37 CFR 1.136)  
805 To accept late request for an Oral Hearing (37 CFR 1.136)  
899 For matters before the Clerk of the Board - not specified

### ☐ PETITIONS DECIDED BY SPECIAL LAWS (SECURITY AND GOVERNMENT INTEREST MATTERS)

- 901 Under 42 USC 2182  
902 Under 42 USC 2457  
903 Under 35 USC 184  
904 Under 35 USC 267  
905 To consider/review security or Government interest matters - not specified

### ☐ PETITIONS DECIDED BY THE SOLICITOR

- 951 Petitions for extension of time in court matters 35 USC 142, 145, 146  
952 Petitions relating to ex parte questions in cases before the Court of Appeals for the Federal Circuit  
953 Requests filed under the Freedom of Information Act  
959 Not specified

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